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1. Purpose and Scope. Section 30.306 of the Energy Employees Occupational Illness Compensation Program Act Regulations requires the OWCP to make findings of fact and conclusions of law with respect to each claim that is filed and to issue a recommended decision for or against the payment of compensation. This chapter describes how to prepare such decisions and the accompanying notice.

2. Policy. This paragraph addresses when recommended decisions are required and the steps which the CE must take to develop the record before issuing a recommended decision.

a. When Decisions are Required. Recommended decisions must be issued when claim forms have been submitted, or in response to letters requesting benefits, or on the OWCP's initiative.

(1) Recommended Decisions. A recommended decision for or against the payment of compensation is required in any case where the OWCP has received a Form EE-1 or EE-2, unless the claim is withdrawn.

(2) Specific Benefits. If a particular benefit (e.g., medical treatment, medical supply, or surgery request) is approved or must be disallowed, a letter to the claimant advising that the benefit has been approved or an explanation as to why the benefit cannot be granted will often suffice. However, any request by the claimant for a formal decision should be granted.

b. Due Process. Before preparing a recommended decision, the CE must adequately develop the claim and, where necessary, advise the claimant of his or her responsibility in establishing entitlement to benefits.

(1) Advising the Claimant. The CE must notify the claimant in writing of the specific additional evidence that is needed before issuing a recommended decision.

2. Policy. (Continued)

(2) Form of Notice. To advise a claimant that additional information or supporting documentation is required, or where a specific benefit is claimed, the CE may use a form or narrative letter to notify the claimant of the information needed.

(3) Time Frames. The notice advises the claimant of his/her responsibilities in regard to the claim and state how much time s/he has to submit the evidence requested before a recommended decision will be issued. Generally this will be 30-60 days from the date of such notice. But, the CE must consider any unusual or extenuating circumstances that may extend the deadline for submitting evidence in a case.

(4) Parties Advised. The CE is to send the notice to the claimant. If a representative is present in the case, the CE sends the letter to this person with copies to the claimant.

(5) Subsequent Actions. After releasing the letter, the CE must consider fully any new evidence that is submitted in response to the request. Further requests for information may be made if needed and/or warranted. Once all available evidence has been received, or a reasonable amount of time for the claimant to submit requested evidence has been provided, the CE will prepare a recommended decision for or against the payment of compensation as outlined in paragraphs 3 and 4 of this chapter. The CE will also prepare a recommended decision if the indicated amount of time has elapsed with no response.

3. Recommended Decisions. OWCP is required to make findings of fact with respect to each claim filed and to make a decision for or against the payment of compensation. A decision granting an award of compensation is based upon the claimant establishing all of the basic elements (i.e., covered employee, covered illness, or causation) of his or her claim. This paragraph describes the form, content and signatory authority of a recommended decision for or against an award of benefits.

a. Contents of a Recommended Decision. Each recommended decision must contain findings of fact sufficient to support the decision to award benefits, deny benefits or award partial benefits. The Notice of Recommended Decision must provide the claimant with information regarding his/her right to file specific objections to the recommended decision and to request a hearing or a review of the written record before the FAB.

b. Format of Recommended Decision. Each recommended decision must have a statement of the case, findings of fact, conclusions of law, and a line for the GS-12 Senior CE or higher level to sign and date.

(1) Statement of the Case. In the statement of the case, the CE explains in a clear and concise narrative format the background of the claim and what information was submitted. The CE is to address the following points in the statement of the case:

(a) Name of the claimant and when the claim was filed;

(b) Benefits the claimant is seeking;

(c) Evidence submitted to establish covered employment if any;

(d) Medical evidence submitted to establish a covered condition if any;

(e) Other relevant evidence submitted;

3. Recommended Decisions. (Continued)

(2) Findings of Fact. The findings of fact are critical to the determination of whether the claimant is awarded benefits. A finding of fact is a determination based on the evidence submitted and any inferences fairly drawn from that evidence. For example, a finding that the claimant failed to meet his/her burden of proof is properly made from the evidence, or lack of it, and not simply because the claimant did not respond to a request for information from the OWCP. The CE is not to include citations in the findings of fact. Citations only belong in the Conclusions of Law.

(3) Conclusions of Law. A conclusion of law is a determination as to how the law is applied to the facts. The CE must state how the facts support the conclusion that the claimant is/is not entitled to benefits under EEOICPA. In the conclusions the CE must address the following points.

(a) Why the claimant is or is not entitled to benefits under EEOICPA._

(b) If the claimant is entitled to benefits under EEOICPA, what benefits are being awarded.

The conclusions should cite the relevant sections of EEOICPA. Conclusions should be no more than one or two sentences for each point.

See Exhibit 1 for a sample recommended decision.

(4) Signature Authority. Designated CEs at the GS-11 level or lower may prepare a recommended decision for the signature of a GS-12 Senior CE level or higher.

4. Writing a Recommended Decision. The CE must write as clearly and concisely as possible so that the recommended decision cannot be misinterpreted. Those individuals who may be reviewing the recommended decision may not be experts in workers' compensation matters.

4. Writing a Recommended Decision. (Continued)

a. Evaluating the Evidence. The CE must observe the following guidelines in preparing findings of fact:

(1) Prepare to draft the recommended decision. It is important to review all the evidence that has been submitted and then determine which evidence is pertinent to the issues under consideration. It may be useful to list all of the documents in the file before starting to write and then identify the important and relevant facts from each document.

(2) Make findings from the evidence. The findings of fact are critical to the determination of whether the claimant is awarded benefits. It requires the CE to draw conclusions from the evidence or lack of evidence presented in the file and not just to recite the statement of the case.

(3) State the findings in an orderly sequence. Doing so will help ensure that the reason for denying the claim follows logically from the facts. Chronological order is often most effective. For example, in discussing whether a cancer was at least as likely as not related to exposure to radiation in a claim for a non-SEC cancer the CE should address: 1) the employment history and exposure data presented by the claimant; 2) the established diagnosis and date of diagnosis; 3) the dose reconstruction report submitted by the National Institute for Occupational Safety and Health (NIOSH); and 4) the percentage calculation derived from the probability of causation algorithm.

(4) State the findings clearly. The CE is to phrase the findings so that the reader cannot misinterpret them.

(5) Confine the discussion to relevant issues. These are the issues that need resolution. It is not necessary to discuss every issue that arose in the case if it is not relevant to the decision.

4. Writing a Recommended Decision. (Continued)

b. Writing Effectively. The basic "audience" for each recommended decision may consist of the claimant, the claimant's representative, a Congressional staff member, and/or appellate reviewers. To convey the meaning of the decision to all of these parties clearly, the CE will:

(1) Use simple words and short sentences. Avoid technical terms and OWCP "jargon", and explain any abbreviations used in the text. This approach will assist readers at every level of education and knowledge about workers' compensation claims.

(2) Use the active rather than the passive voice. For example, state that "The OWCP received the medical report," rather than "The medical report was received by OWCP."

(3) Use the third person. For example, state that "the employee's physician diagnosed bronchitis", rather than "your physician diagnosed bronchitis".

(4) Divide lengthy discussions into short paragraphs (under 10 lines).

5. Further Rights of Action Contained in a Notice of Recommended Decision and Claimant Rights. This paragraph describes the contents of the Notice of Recommended Decision and Claimant Rights (see Exhibit 2) that must accompany a recommended decision and advise the claimant of his/her rights of further action when the claim as a whole or in part is accepted or denied by the DO. These rights of action include:

a. Review. If the claimant wishes to object to all or part of the recommended decision then the claimant must file any objections within 60 days from the date of issuance of such recommended decision and must file a

5. Further Rights of Action Contained in a Notice of Recommended Decision and Claimant Rights. (Continued)

request for a hearing before the Final Adjudication Branch (FAB). Moreover, the claimant is required to describe an objection to a specific finding of fact or conclusion of law. The claimant may (but is not required to) submit new evidence in connection with a hearing.

b. Review of the Written Record. If the claimant wishes to object to all or part of the recommended decision, but does not request a hearing or requests that the FAB conduct a review of the written record (no oral testimony is taken) then the claimant must file his or her objection within 60 days from the date of the issuance of such recommended decision. The claimant may (but is not required to) submit new evidence in connection with the review.

c. Waiver. The claimant may waive his or her right to a hearing or review of the written record and request the FAB to issue a final decision. In this instance, the claimant would be required to sign a waiver.

6. Issuing Recommended Decisions. This paragraph addresses the steps for reviewing and releasing a recommended decision. After preparing a recommended decision, the CE must do the following:

a. Route the recommended decision and case file to the SrCE for signature, date, and release.

(1) The GS-12 Senior CE, or higher level, should review, sign and date a recommended decision regarding

initial claims, requests for medical treatment, equipment/supplies, and surgery requests if s/he agrees with the decision. If the individual responsible for reviewing the recommended decision discovers a deficiency or other problem, it will be

6. Issuing Recommended Decisions. (Continued)

returned to the CE with a detailed explanation of why it is not in posture for release. When the SrCE or other reviewer has provided comments or has extensively edited the recommended decision, the CE is to revise the decision accordingly.

(2) The date of the recommended decision should be the date on which it was placed in the mail.

(3) An original signed and dated recommended decision is filed in the case record.

(4) The Senior CE makes the appropriate status code changes in the ECMS.

b. At the same time or within 24 hours of mailing the recommended decision to the claimant, the case record should be forwarded to the FAB unit.

Statement of the Case.

On August 1, 2001, John Smith filed a claim for benefits under EEOICPA seeking a \$150,000 award of compensation.

Mr. Smith submitted a written affidavit that he was employed at a Paducah, Kentucky gaseous diffusion plant by Union Carbide Corp Nuclear Division from January 1954 through December 1970. His affidavit states that he was monitored through the use of a dosimetry badge for exposure to radiation. The Department of Energy submitted a report that Union Carbide Corp Nuclear Division was a contractor for the Department of Energy during the period January 1954 through December 1970.

Mr. Smith submitted a medical report from Dr. Doe dated February 2, 1964. Dr. Doe diagnosed Mr. Smith as having a malignant tumor in his colon which was most consistent with primary colon cancer.

Findings of Fact.

John Smith filed a claim for benefits on August 1, 2001.

Mr. Smith was employed by Union Carbide Corp Nuclear Division at the Paducah, Kentucky gaseous diffusion plant for more than 250 workdays from January 1954 through December 1970.

Mr. Smith was monitored through the use of a dosimetry badge for exposure to radiation during his employment at the gaseous diffusion plant.

Union Carbide Corp Nuclear Division was a contractor for the Department of Energy during the period January 1954 through December 1970.

On February 2, 1964 Mr. Smith was diagnosed with primary colon cancer.

The onset of Mr. Smith's colon cancer was more than 5 years after he began working at the gaseous diffusion plant.

Conclusions of Law.

Claimant's primary colon cancer is a specified cancer under section 7384l(17) of EEOICPA and 20 CFR §30.5(dd)(4)(xiii). Claimant is a member of a Special Exposure Cohort under Section 7384l(14) of EEOICPA and 20 CFR §30.213. Claimant is entitled to compensation in the amount of \$150,000 pursuant to section 7384s(a) of EEOICPA. He is also entitled to medical benefits for colon cancer effective _____.

NOTICE OF RECOMMENDED DECISION AND CLAIMANT RIGHTS

The District Office has issued a recommended decision in regard to your claim under the Energy Employees Occupational Illness Compensation Program Act. This notice explains how to file objections to the recommended decision. This notice also explains what to do if you agree with the recommended decision and want the FAB to issue a final decision before the 60-day period has ended. Read the instructions contained in this notice carefully.

IF YOU WISH TO OBJECT TO THE RECOMMENDED DECISION:

If you disagree with all or part of the recommended decision, you **MUST** file specific objections to it **within sixty (60) days from the date of the recommended decision** by writing to the Final Adjudication Branch at:

Final Adjudication Branch
DO Address

Your objections **MUST** clearly state the reasons for your disagreement and indicate the specific findings of fact and/or conclusions of law with which you disagree, including any objections to any dose reconstruction performed. If you want an informal oral hearing on your objections, at which you will be given the opportunity to present both oral testimony and written evidence in support of your claim, you **MUST** request a hearing when you file your objections. If you do not include a request for a hearing with your objections, the Final Adjudication Branch will consider your objections through a review of the written record, which will also give you the opportunity to present written evidence in support of your claim. **If you fail to file any specific objections to the recommended decision, it will be affirmed by the Final Adjudication Branch and your right to challenge the recommended decision will be waived for all purposes, even if you have requested an oral hearing.** Any recommended decision that is pending a hearing or review of the written record for more than one year from the date the Final Adjudication Branch receives the claim file will be affirmed.

IF YOU AGREE WITH THE RECOMMENDED DECISION:

If you agree with the recommended decision and wish for it to be affirmed in a final decision without change, you may submit a written statement waiving your right to object to it to the Final Adjudication Branch, at the above address. This action will allow the Final Adjudication Branch to issue a final decision on your claim before the end of the sixty-day period for filing objections. If you wish to object to only part of the recommended decision and waive any objections to the remaining parts of the decision, you may do so. In that situation, the Final Adjudication Branch may issue a final decision affirming the parts of the recommended decision to which you do not object.

Be sure to print your name, file number and the date of the recommended decision in any correspondence submitted to the Final Adjudication Branch.